



Claimant did testify to advising Mr. Jim Cook, the owner of the store, of this injury at some later date; although, he did not remember the exact date of the conversation. Mr. Cook advised that he first learned of the alleged injury approximately one week after the alleged date of injury.

K.S.A. 44-520 requires notice of the accident, stating the time and place and particulars thereof and the name and address of the person injured, be given to the employer within ten (10) days after the date of accident. Based upon the testimony of the claimant, and in considering the testimony of Mr. Cook, the Appeals Board finds claimant did provide notice of accident to respondent within ten (10) days of the date of accident.

The Appeals Board will next decide whether or not claimant suffered personal injury by accident arising out of and in the course of his employment on the dates alleged.

The evidence presented is somewhat contradictory in that claimant contends the injury occurred while working on I-beams with respondent. These I-beams, while weighing only twenty (20) pounds, were rather long and difficult to handle. Respondent contends claimant failed to advise anyone of the injury on the alleged date and, further, claimant did not appear, to his coworkers, to exhibit any signs of ongoing difficulties on the alleged injury date. When the question of witness credibility arises, the Administrative Law Judge has an advantage over the Appeals Board in having the opportunity to observe the demeanor of the witnesses. The Appeals Board, in recognizing this advantage on the part of the Special Administrative Law Judge, defers to the Special Administrative Law Judge in assessing the credibility and believability of live witness testimony. The Special Administrative Law Judge in this instance felt the testimony of the claimant to be more credible. The Appeals Board finds, for purpose of preliminary hearing only, that claimant has shown by a preponderance of the credible evidence his entitlement to benefits, having proven he suffered accidental injury arising out of and in the course of his employment with respondent on or about June 8 or June 9, 1995.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Special Administrative Law Judge John M. Russell dated October 11, 1995, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c:     Norman I. Cooley, Wichita, KS  
       Ronald J. Laskowski, Topeka, KS  
       John M. Russell, Special Administrative Law Judge  
       Philip S. Harness, Director